



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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- I. **SUBJECT:** SEARCHES OF CLOSED CONTAINERS INCIDENT TO ARREST
- II. **QUESTION:** WHEN MAY OFFICERS SEARCH CLOSED CONTAINERS
INCIDENT TO A LAWFUL ARREST?
- III. **ANSWER:** ACCORDING TO THE NEW YORK STATE COURT OF APPEALS IN
PEOPLE V. JIMENEZ, OFFICERS MAY ONLY SEARCH CLOSED
CONTAINERS INCIDENT TO ARREST WHEN THERE ARE
EXIGENT CIRCUMSTANCES.

IV. DISCUSSION

A. Introduction

The New York State Court of Appeals recently issued a decision in People v. Jimenez,¹ which reaffirms the New York State rule requiring that officers face exigent circumstances in order to search a closed container incident to arrest. The purpose of this bulletin is to summarize the facts and holding of this case, as well as to explain its impact on the New York City Police Department.

B. Facts

Police were responding to a 911 call reporting a burglary in a Trespass Affidavit Program (TAP) building when two officers observed defendant Josefina Jimenez coming into the lobby from a stairwell. Another woman, later identified as the building's superintendent, directed the officers' attention to the defendant by pointing at her and making a face suggesting that they stop her. One of the officers then questioned the defendant to determine whether she was trespassing. The defendant gave the officer an equivocal response when asked why she was in the building. Based on her response, the officers arrested the defendant for trespassing. While the officers were arresting the defendant, one of the officers removed a large, heavy purse from defendant's shoulder. The officer opened the purse and recovered a loaded handgun. The officers then handcuffed the defendant and transported her to the precinct for processing.

The defendant moved to suppress the gun, and the Appellate Division denied the defendant's motion. On appeal, the Court of Appeals upheld the defendant's conviction for trespass, but granted the defendant's motion to suppress the handgun.

¹ 2014 NY Slip Op 1262(U) (2014).

C. Holding

The Court of Appeals held that the search of defendant's purse was an unconstitutional search incident to arrest. The court explained that a warrantless search of a closed container² – whether locked or unlocked – found on a suspect's person incident to arrest requires that officers face exigent circumstances.

The Jimenez Court explained that officers must face at least one of the following scenarios in order to find that exigent circumstances exist:

- 1) The officers have a reasonable belief that the closed container holds destructible evidence, or
- 2) The officers have a reasonable belief that the suspect poses a threat to officer safety.

The court clarified the circumstances under which officers would have a reasonable belief that the suspect poses a threat to officer safety. Officer safety is implicated, for example, where officers believe that the suspect may gain possession of an actual weapon. The crime for which an individual is suspected may in itself lead an officer to believe that the he or she poses such a threat. For example, officers have a reasonable belief that a suspect is armed where they receive a tip that the suspect displayed a weapon. Additionally, officers may reasonably fear for their safety where the suspect has a threatening demeanor, or where the suspect resists the removal of the closed container from his or her person.

The Jimenez court held that the search was improper because the officers did not encounter exigent circumstances for the following reasons. First, the circumstances did not suggest that the arrestee's purse contained destructible evidence. Second, the court held that the officers did not reasonably fear for their safety because:

- The defendant was cooperative during her arrest,
- The defendant did not resist the officers' removal of the purse from her person,
- The defendant did not have a threatening demeanor,
- The signals of the superintendent who directed the officers' attention to the defendant did not suggest that the defendant was armed, and
- Nothing connected the defendant to the burglary to which the officers were responding.

In the absence of exigent circumstances, the court held that the officers' search of the suspect's purse incident to her lawful arrest was unconstitutional in violation of the Fourth Amendment. Accordingly, the court suppressed the gun that was recovered from the defendant's purse.

D. The Impact of the Jimenez Decision on the NYPD

In light of the Jimenez decision, officers may only search closed containers found within an arrestee's immediate control if they face exigent circumstances. Specifically, officers must have a reasonable belief that: (1) the suspect may be able to destroy evidence located in the closed container, or that (2) the suspect may gain possession of an actual weapon from the closed container. Officers who

² Examples of closed containers are purses, briefcases, backpacks, coin purses, and duffel bags.

search a closed container because they believe they face exigent circumstances must be prepared to articulate the specific facts that led them to this conclusion. Proper articulation will assist in avoiding the suppression of valuable evidence seized incident to a lawful arrest.

Note that this decision only applies to the warrantless search of closed containers incident to arrest. This decision does not require that officers find exigent circumstances prior to conducting a search of the arrestee's person, including his or her clothing. Rather, an officer's authority to conduct a search incident to arrest of an arrestee's person is triggered automatically upon a lawful arrest.

Additionally, officers should recognize that this decision does not foreclose officers from searching a closed container seized incident to arrest through alternative means. An officer who cannot lawfully search or simply does not search a closed container incident to arrest may nevertheless be able to search the container in one of the following ways:

- Officers may seek consent to search the closed container. If the suspect gives officers voluntary consent, they may search the closed container.
- Officers may apply for a search warrant if they have probable cause to believe the container holds contraband or evidence of a crime.
- Officers may search the closed container as part of an inventory search: (1) as long as the inventory search is not merely a ruse to discover incriminating evidence, and (2) as long as the inventory search is performed as a routine matter in compliance with Section 218 of the Patrol Guide. Note that contraband found pursuant to an inventory search may form the basis for additional charges, such as Criminal Possession of a Weapon or Criminal Possession of a Controlled Substance.

E. Conclusion

Jimenez requires that officers face exigent circumstances prior to searching closed containers seized incident to arrest. However, this decision does not change the law granting officers automatic authority to search an arrestee's person incident to arrest. Any closed containers seized incident to a lawful arrest should only be searched if: (1) there are exigent circumstances, (2) officers have consent to search the closed container, (3) the search is conducted pursuant to a warrant, or (4) the search is conducted pursuant to an inventory search.

Any questions about the above-discussed principles should be directed to the Legal Bureau at (646) 610-5400.

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